

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

Chapter VIII, Rule 32(2) (b)
Description of case

Crl. Misc. Application No. 459 of 2006

Date of Decision: 26-6-2006

~~A.F.R. (Approved for Reporting)~~

Not approved for reporting

Date:- 26-6-2006

Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 459 of 2006

1. Smt. Hadishan
W/o Shri Abdul Mazid
 2. Smt. Sahrun Nisha
W/o Shri Khurshid
 3. Islamuddin
S/o Shri Abdul Mazid
All R/o Mehuwala Mafi
Polcie station – Patel Nagar
District- Dehradun
- ...Applicants

Versus

1. State of Uttaranchal
 2. Mustaq
S/o Shri Ajimudding
R/o Mehuwala Mafi
Police Station-Patel Nagar
District- Dehradun
- Respondents

Sri Sandeep Tandon, learned counsel for the applicant.
Sri Amit Bhatt, learned A.G.A. for the State.

Hon'ble J.C.S. Rawat, J.

The petition u/s 482 Cr.P.C. has been filed to set aside the impugned order dated 09.05.2006 passed by the learned Chief Judicial Magistrate, Dehradun in Criminal Case No. 73 of 2006, State Vs. Shamdhad & others u/s 498A, 342, 323, 504, 506 I.P.C. and $\frac{3}{4}$ Dowry & Prohibition Act and to quash the chargesheet dated 05.05.2006 submitted by the Police Patel Nagar, Derhadun in Case Crime No. 85 of 2006.

Brief facts for the disposal of this petition are that marriage in between Hajara Khatun and Shamshad took place on 09.04.2005. Thereafter, the behavior of the husband- Shamshad and his in-laws were cruel towards Hajara khatun and they demanded the dowry in terms of cash of Rs. 3 lacs. The same was given to the husband and in-laws. Thereafter, they constructed a shop in the Shimla by-pass. On 019.04.2006 again the father of the girl came to know that her daughter is being treated cruelly and she was subjected to marpeet and he went to there and he was also subjected to assault. An F.I.R.

was lodged before the police station and the investigation was completed and the chargheet was submitted by the Investigating Officer.

The learned Magistrate took the cognizance and the husband-Shamshad appeared before the court and he was enlarged on bail. The present petition has been filed by Smt. Hadishan, Smt. Sahrn Nisha and Isamudding The applicant No. 1-Smt. Hadishan is mother-in-law, applicant No. 2-Smt. Sahrn Nisha is Jethani and applicant No. 3-Isamuddin is the brother-in-law of Jajara Khatun. Feeling aggrieved by the order of the court and the chargesheet, the present appeal has been preferred.

Learned counsel for the applicants contended that immediately after the marriage, there had been a consistent pressure on behalf of Smt.Hajara Khatun with the collusion of her father for separate living in Dehradun. The father-in-law-respondent No.2 also asked the co-accused Shamshad that it would be in the interest of the daughter of Mustaq-respondent No.2 and the co-accused Shamshad that they would live separately from his family members. It was further contended that parents of Smt. Hajara Khatun also started to interfere in the matrimonial life of Shamshad and the respondent No. 2 with the collusion with his daughter Smt. Jajara Khatun started the demand of separate living. It was further contended that no case is made out against the present accused-applicants. It was further contended that the entire statement leads to take inference that the defence theory as suggested by the accused-applicants is believable and at this stage there is not evidence against the present accused-applicants. Learned A.G.A. refuted the contention. Perusal of the record reveals that there are averments against the present accused-applicants in the F.I.R. and also in the evidence. While exercising the power u/s 482 Cr.P.C., the court does not function as a court of Appeal or Revision. The inherent power u/s 482 Cr.P.C. though wide has to be exercised very sparingly and with caution. This court

while exercising jurisdiction under section 482 Cr.P.C., would not ordinarily embark upon an enquiry whether the evidence in question reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial court. The judicial process should not be an instrument of oppression, or, needless harassment. The court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstance into consideration. The High Court should normally refrain from giving a prima-facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the court and the issues involved, whether the factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. There is a prima-facia case against the present accused-applicants.

In view of the above, the petition devoid of merit is liable to be dismissed and the same is dismissed accordingly.

(J.C.S. Raw at, J.)

26th June, 2006
Shiv